

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

DISTRICT JUDGE GERALD BRUCE LEE  
MAGISTRATE JUDGE JOHN F. ANDERSON

MICROSOFT CORPORATION	)	
	)	
Plaintiff,	)	
v.	)	CASE NO. 1:08cv00596-GBL-JFA
	)	
L & Y ELECTRONICS, INC.,	)	
	)	
JOHN A. LINTON, and	)	
	)	
SANGSOON LINTON	)	
	)	
Defendants.	)	

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REPLY TO MICROSOFT CORPORATION'S RESPONSE TO DEFENDANTS'

MOTION FOR VOLUNTARY DISMISSAL OF VIRGINIA ANTITRUST

COUNTERCLAIM

Defendants, L & Y ELECTRONICS, INC., JOHN A. LINTON, AND SANGSOON LINTON (collectively "Defendants" hereinafter) by counsel, submit this Reply as follows:

1. Defendants have requested a dismissal of their Virginia antitrust counterclaim on the basis that the Virginia antitrust claims must be brought in a Virginia circuit court.
2. As noted in the relevant Virginia statutes, initiation of antitrust actions based upon the Virginia antitrust act is jurisdictional.

3. Virginia Code § 59.1-9.8 requires the use of a Virginia circuit court:

Virginia Code § 59.1-9.8. Forum; restraining orders and injunctions; penalties.

Actions and proceedings for violations of this chapter shall be brought in the circuit courts of this Commonwealth. Those courts may issue temporary restraining orders and injunctions to prevent and restrain violations of this chapter, and may award the damages and impose the civil penalties provided herein. They may also grant mandatory injunctions reasonably necessary to eliminate violations of this chapter.

4. Virginia Code § 59.1-9.9 identifies the required venue:

Virginia Code § 59.1-9.9. Venue.

The venue for all actions and proceedings for violations of this chapter shall be as specified below in this section.

The circuit court of the county or city wherein any defendant: (I) resides; or (ii) regularly or systematically conducts affairs or business activity; or (iii) has property that may be affected by the action or proceeding. Provided, however, that if said defendant does not, as specified in (I), (ii) and (iii) above, reside in, conduct affairs or business activity in, or have such property in the Commonwealth, then the action or proceeding may be brought in the circuit court of the county or city in which the registered office of said defendant is located or wherein the alleged violation occurred.

5. Pursuant to Federal Rule of Civil Procedure 41(a), voluntary dismissals are without prejudice.
6. Pursuant to Federal Rule of Civil Procedure 41(b), involuntary dismissals for lack of jurisdiction or improper venues are not an adjudication on the merits and therefore are without prejudice.
7. In this instance, the Defendants are requesting a voluntary dismissal, there exists improper venue as well as lack of jurisdiction to the forum.

WHEREFORE Defendants respectfully request that Defendants' second counterclaim be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41 to the extent the second counterclaim is based upon Virginia antitrust law (Virginia Code Section 59.1-9.1 *et seq.*).

Respectfully submitted,

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/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 26<sup>th</sup> day of August, 2008, I will electronically file the forgoing Motion with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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/s/  
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